

SUBMISSION ON THE SOUTH AFRICAN CLIMATE CHANGE BILL

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28 October 2022

Climate, Energy and Infrastructure Programme

Outline

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Declaration of Climate Emergency

- **Preamble:**

AND WHEREAS climate variability in the Republic, including the increased frequency and intensity of extreme weather events, will affect, amongst other things, human health, access to food and water, biodiversity, habitats and ecosystems, the coast and coastal infrastructure and human settlements;

- South Africa has accepted the weight of the scientific understanding
- But to be a leader, the Bill needs to declare a **Climate Emergency** in its preamble.

Defining a Just Transition

- **Just Transition Definition**

“just transition” means a shift towards a low-carbon, climate-resilient economy and society and ecologically sustainable economies and societies which contribute toward the creation of decent work for all, social inclusion and the eradication of poverty; 35

- **Problem:** The current definition is not an adequate response to the structural change that needs to take place in order to shift towards a low carbon and climate resilient economy.
- **Recommendation:** Inequality reduction should also be included in the definition to ensure that a just transition is associated with a society that ensures human and planetary wellbeing.
- We recommend that the definition for just transition include inequality eradication.

Missing Definitions

- The Bill does not define resilience, yet the Bill mentions the word resilience in several instances (see pages 14, 15 and pgs 23-26, 41).
- Resilience is taken to be something that needs to be strengthened as part of an adaptation response.
- The omission of a definition of resilience is of major concern as it is a contested term. And each definition has implications on the type of adaptation pathway that is selected.
- A much improved definition, therefore, would also incorporate to its definition the need for the transformation of problematic core functions of a system that cause climate change.

Mitigation: Greenhouse Gas Emissions Reduction

- **Section 22.5**

(5) When determining the sectoral emissions targets, the Minister must take all relevant considerations into account, including, amongst others— 50

- (a) the socio-economic impacts of introducing the sectoral emissions targets; and
- (b) the best available science, evidence and information.

- The Bill should require the Minister to state how all relevant considerations were taken into account
- E.G Transitional risks associated with proposed sectoral emissions targets should also be included amongst the Minister's considerations when setting sectoral emissions targets.
 - This will ensure that the mitigation of climate risk through reduced emissions, is accompanied by transition plans that ensure that vulnerable and impacted workers and communities are not left behind.

Mitigation: Greenhouse Gas Emissions Reduction

- **Section 22.3**

(3) The Minister must, in consultation with the Ministers responsible for each sector and sub-sector listed in terms of subsections (1) and (2), determine by notice in the *Gazette* the prescribed framework and the sectoral emissions targets for sectors and sub-sectors. 35

- **Problem:** While provision 22 sets the basis upon which emissions targets are to be determined in subsection 22.3, the provision does not disclose the purpose of the prescribed framework nor does it set the basis upon which this prescribed framework is to be determined.
- **Recommendation:**
 - that the purpose of the prescribed framework, and how it is to be determined, be provided for in the Bill.
 - that the prescribed framework must also include measures to ensure a just transition associated with the sectoral emissions targets for the sectors and subsectors.

Mitigation: Greenhouse Gas Emissions Reduction

- **Section 23.1**

23. (1) The Minister must, by notice in the *Gazette*, publish a list of greenhouse gases which the Minister reasonably believes cause or are likely to cause or exacerbate climate change.

- **Problem:** It is not clear on what basis the Minister's belief in which GHGs are likely to cause or exacerbate climate change.
- The basis upon which the Minister identifies the GHGs that cause climate change is important to ensure the legitimacy of the process.
- **Recommendation:** To maintain the legitimacy of the process, we recommend that the basis upon which the Minister determines the list of GHGs and determines reasonableness should be stated explicitly and the Bill should require this to be based on trusted and up to date science as determined in IPCC reports.

Mitigation: Greenhouse Gas Emissions Reduction

- Section 24.4

(4) (a) A person to whom a carbon budget has been allocated in terms of subsection (1) must prepare and submit to the Minister, for approval, a greenhouse gas mitigation plan.

(b) A greenhouse gas mitigation plan must—

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(i) describe the mitigation measures that the person, to whom a carbon budget is allocated, proposes to implement in order to remain within the person's allocated carbon budget; and

(ii) comply with the content requirements of such plans as may be prescribed by the Minister in terms of section 27, including requirements pertaining to processes, procedures and reporting.

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- **Problem:** Absent from the requirements of the mitigation plan are the person's plans to ensure a just transition for workers that are directly affected by reduced emissions of the activities.
- **Recommendation:**
 - These just transition plans must be negotiated with the workers and vulnerable communities directly affected by the reduced emissions.
 - The document must include details of the timelines and stakeholders that must be involved in the implementation of the just transition plan.

Mitigation: Greenhouse Gas Emissions Reduction

- **Section 24.6e**

(e) in the event that such reporting indicates that the person has failed, is failing or will fail to comply with the allocated carbon budget, provide a description of measures the person will implement in order to remain within the allocated carbon budget. 5

- **Problem:** While this provision requests that the person describe the steps they will take to adhere to the prescribed carbon budget, such a request stops short of being enforceable. Enforcement is extremely weak here.
- **Recommendation:** Punitive measures such as inspectorate and sanctions, must be included to hold those persons that do not honour their committed carbon budget allocation.

Mitigation: Greenhouse Gas Emissions Reduction

- **Section 25**

25. (1) The Minister, in consultation with the Ministers responsible for the greenhouse gas emitting sectors and sub-sectors contemplated in section 22, must by notice in the *Gazette*—

- (a) declare certain greenhouse gases to be synthetic greenhouse gases; 30
- (b) specify, in respect of each of the gases listed in the declaration contemplated in paragraph (a), whether such gases are required to be phased out or phased down;
- (c) prescribe thresholds for the use of synthetic greenhouse gases in terms of section 23(3)(b); and 35
- (d) contain timeframes for the phase-down or phase-out of synthetic greenhouse gases.

- **Problem:** The clause makes no mention of the *prescribed* limits and uses for synthetic gasses. It also does not mention any specific timeline for phasing out synthetic emissions.
- **Recommendations:** We recommend that the Minister be empowered to set prescribed limits and uses for synthetic gasses, and to also specify timelines for phasing out synthetic emissions, in consultation with Ministers responsible for GHG emitting sectors and subsectors.

Mitigation: Greenhouse Gas Emissions Reduction

- Section 26.1

26. (1) The Minister must establish an institutional arrangement to facilitate a national system of data collection for the creation of a National Greenhouse Gas Inventory and the annual compilation of the National Greenhouse Gas Inventory Report.

- In **addition** to a GHG Inventory Report, the Minister should also release a report that explains how its mitigation measures directly benefited communities, women and workers.

Adaptation

- Section 16.1

16. (1) The Minister must, within one year of the coming into operation of this Act, determine by notice in the *Gazette*—

(a) national adaptation objectives which will guide the Republic's adaptation to climate change impacts, the development of resilience and sustainable development; 10

- **Problem:** Absent from the clause or its sub-clauses is the information or data that informs the setting of these objectives and if these objectives will be done through a consultative process.
- **Recommendation:**
- Socio-economic rights provided for in Chapter 2 of the Constitution, such as the right to clean water, health, energy access, and housing are central to building adaptation capacity, ensuring transformative resilience and sustainable development.
- We therefore recommend a provision, amongst others, that states that adaptation objectives should be informed by the socio-economic rights provided for in the Constitution in order to strengthen the Bills measures.

Adaptation

- **Section 16.2**

(2) The Minister may, periodically, review and amend the national adaptation objectives contemplated in subsection (1)(a).

- **Problem:** The basis and timing upon which the minister reviews and amends these objectives is unclear.
- **Recommendation:** We therefore recommend a provision that clarifies these issues.

Adaptation

- **Section 18. 2 and 18.5**

(2) The Minister must, in consultation with the Ministers responsible for the functions listed in Schedule 2, develop and publish a National Adaptation Strategy and Plan by notice in the *Gazette* within two years of the coming into operation of this Act. 40

- **Problem:** One of the factors absent from the Bill are provisions for relocation of communities affected by climate change, which might result in the communities being permanently displaced.
- **Recommendation:** The Bill is recommended to set in place relocation guidelines that will be implemented by a Task Team selected by the Minister. The guidelines should set out how affected communities should be relocated and provide a coordination mechanism that guarantees a minimum standard of protection and enables the engagement of all stakeholders affected to manage the relocation.

Adaptation

- **Section 18.4**

- (4) The purpose of the National Adaptation Strategy and Plan is to—
- (a) achieve a reduction in the vulnerability of society, the economy and the environment to the effects of climate change, strengthen the resilience of the socio-economic and environmental system and enhance the adaptive capacity of society, the environment and economy to the impacts of climate change; 50
 - (b) reduce the risk and vulnerabilities to current and future climate scenarios;
 - (c) achieve the national adaptation objectives contemplated in section 16;
 - (d) provide a strategic and policy directive for adaptation to the impacts of climate change; and
 - (e) provide an integrated and coordinated approach to the management of adaptation measures in response to the impacts of climate change by organs of state in all spheres of government, and where relevant it should also include non-governmental organisations, the private sector and local communities. 5

- **Problem:** absent from these sub-provisions is what the purpose of the NASP is to support just transition efforts.
- **Recommendation:** a sub-provision be included that the purpose of the NASP is to support just transition efforts.

Adaptation

- Section 18.5e

- (e) a plan that details the implementation of adaptation responses informed by the objectives and indicators contemplated in section 16.

- **Problem:** It is unclear who is responsible for the implementation of the NASP.
- **Recommendation:** We recommend that the plan details those responsible for the implementation of the NASP.

Accountability, Enforcement, Monitoring

The IPCC defines “exposure” as the presence of people; livelihoods; species or ecosystems; environmental functions, services and resources; infrastructure; or economic, social or cultural assets in places and settings that could be adversely affected.

- **Problem:** This absence is significant as it should be part of a risk assessment framework that identifies vulnerability of various groups and plans for adaptation and resilience.
- The Bill does not have a transparent framework that requires public and private entities to disclose climate change risk and prepare for those risks and opportunities. This lack of transparency thus reduces better decision making on which communities are most vulnerable to the effects of climate change and it further reduces government’s response to climate change and public awareness of the issues.
- **Recommendation:** To improve accountability, the Bill should require the disclosure by public and private entities of their exposure to climate risks and the measures they are taking through investment decisions to reduce them. In addition, the Bill should make provisions for the development of an online publicly available registry of adaptation projects. This registry will house all projects in the country that address adaptation.

Accountability, enforcement, Monitoring

- The Bill does not include measures that sanction non-compliance with the provisions of the Bill nor does it include adequate enforcement mechanisms to ensure compliance to the mitigation and adaptation provisions.
- The mitigation chapter (Chapter 5) of the Bill does not adequately ensure that large polluters are penalised or taxed, in fact the entire mitigation section does not even explicitly mention any tax measures. Therefore, it is still unclear what the implications will be for companies that, for example, exceed the prescribed carbon budget threshold.
- The Bill does not make provision for loss and damage.
 - We recommend that the following provisions be included in the Bill.
 - A punitive fine (imprisonment or other sanctions in certain cases) be implemented for those in breach of the Bill.
 - That the Bill contain provisions for a carbon tax
 - That a person suffering loss or damage as a consequence of a breach to the Bill may pursue a civil claim in court for damages suffered.
 - That a well-resourced forensic inspectorate be instituted to ensure the enforcement of obligations of the Bill.

Financing

The Bill does not include provisions for sustainable finance.

- The absence of provisions for sustainable finance renders the Bill ineffective at meeting any of its objectives given the need for urgent and adequate climate finance as stipulated by the IPPC.
- **Recommendations:** We make the following recommendations for the Minister of Finance:
 - Develop and implement a Sustainable Finance Taxonomy with the purpose of
 - i. setting public standards that identify the impact of financial products on the environment,
 - ii. identifies and distinguishes between economic activities that support sustainable development and those economic activities that do not support sustainable development
 - iii. provide thresholds that render an activity sustainable to support the public financing of sustainable development,
 - oversee South Africa's interactions with multilateral development banks to support access to sustainable finance flows,
 - be a channel between donors and sector recipients of climate finance to ensure that there is a collaborative approach in the design of proposals, implementation arrangements and the leveraging of co-benefits, and
 - be involved in national budget processes that are mandated to implement climate budget coding and tracking systems and the integration of these systems into the national public financial management system.

Gender and priority groups

- **Problem:** Mitigation measures barely refer to the gendered nature of the impact of climate change and does not specify strategies for gender responsive mitigation.
- **Recommendation:** The Department of Women, Youth and People with Disabilities should be consulted around either adaptation or mitigation strategies.